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In the Supreme Court of the United States

OCTOBER TERM, 1959

UNITED STATES, PETITIONER

v.

CURTIS M. THOMAS, REGISTRAR OF VOTERS OF WASHINGTON PARISH, LOUISIANA, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the United States, respectfully prays that a writ of certiorari issue in this case to the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The findings of fact and conclusions of law entered by the United States District Court for the Eastern District of Louisiana on January 11, 1960 (Appendix, *infra*, pp. 4a–11a) are not reported. The District Court's opinion of October 7, 1959, denying motions

*The complaint filed by the United States named a total of six defendants. See Appendix, *infra*, p. 1a, which sets forth the style of the case in the District Court. Only one defendant, Thomas, has thus far appealed and, precisely speaking, he is the only respondent before the Court at this time.

to dismiss the complaint (Appendix, *infra*, pp. 11a–19a), is reported at 177 F. Supp. 355.

JURISDICTION

The decree of the District Court granting a preliminary injunction (Appendix, *infra*, pp. 1a–4a) was entered on January 11, 1960. A notice of appeal to the Court of Appeals for the Fifth Circuit was filed by respondent Thomas on January 13, 1960, and the record on appeal was docketed in that court on January 27, 1960. On January 21, 1960, the Court of Appeals granted a stay, pending appeal, of the injunction issued by the District Court. On January 22, 1960, the United States applied to this Court to vacate the stay order of the Court of Appeals. On January 26, 1960, this Court entered an order (footnote 2, p. 7, *infra*) stating that it would entertain a petition for certiorari to review the judgment of the District Court if filed by the Solicitor General on or before January 29, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), 2101(e).

QUESTIONS PRESENTED

1. Whether the Civil Rights Act of 1957 (42 U.S.C. 1971 (a), (c)), as here applied, is constitutional.

2. Whether, in the circumstances found by the District Court, the relief provided in the decree was authorized and appropriate.

STATUTES INVOLVED

42 U.S.C. 1971 (R.S. 2004, as amended by the Civil Rights Act of 1957, 71 Stat. 637) provides in pertinent part that:

> (a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.
>
> (b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general, special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.
>
> (c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), the Attorney General may institute

for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

* * * * * *

Title 18, Louisiana Revised Statutes, 1950, provides:

§ 245. Illegal registration or loss of right to vote; notice to registrant; cancellation of name on failure to prove right

Upon a written affidavit signed and sworn to in duplicate before and filed with the registrar or his deputy by any two bona fide registered voters of the parish, to the effect that after reasonable investigation and on information and belief certain persons are illegally registered, or have lost their right to vote in the precinct, ward, or parish in which they are registered by reason of removal or otherwise, the registrar shall immediately, or, in any event, within forty-eight hours, notify the registrants by mailing to them postage prepaid, under P.O. Form 3547—Requested, at the addresses given in the registration records, the duplicate copy of affidavit, together with a printed citation requiring them to appear in person before the registrar or his deputy within ten days from the date of the mailing of the duplicate affidavit and citation, which date shall be stated in the citation, and prove their right to remain on the registration rolls by written affidavit of three bona fide registered voters in the form

as provided in R.S. 18:132. The registrar shall immediately make a similar publication, as provided for in R.S. 18:132, and, if the challenged registrants fail, within the same delays provided in that Section, to prove their right to remain on the rolls, as in that Section provided, the registrar shall cancel their names from the registration records as provided by R.S. 18:135.

STATEMENT

On June 29, 1959, the Attorney General, acting on behalf of the United States and pursuant to the authority conferred by 42 U.S.C. 1971(c) (*supra*, pp. 3–4), filed a complaint in the United States District Court for the Eastern District of Louisiana against the Citizens Council of Washington Parish, Louisiana, four members of the Citizens Council, and respondent Curtis M. Thomas, Registrar of Voters of Washington Parish, Louisiana. The complaint sought an injunction restraining the individual defendants and the Citizens Council from making racially discriminatory challenges of voters and enjoining the Registrar from giving legal effect to these challenges.[1]

On October 7, 1959, the District Court denied motions to dismiss the complaint. On November 18, 1959, a hearing was held on a motion for a preliminary injunction filed by the United States, and evi-

[1] Title 18, Section 245 of the Revised Statutes of Louisiana, *supra*, provides that any two voters of a parish may challenge the right of registrants who are believed to be illegally registered to remain on the voter rolls. The registrants thus challenged have an opportunity to contest the challenges; however, if they fail to prove their right to remain on the rolls, their names are removed therefrom.

dence was offered by all parties. On January 11, 1960, the District Court entered a decree and findings of fact and conclusions of law.

The court found (Appendix, *infra*, pp. 4a–8a) that the individual defendants had challenged approximately 1377 Negro registrants and ten white registrants; that, prior to the time of the challenges, there were 1517 Negroes and 11,444 white persons on the Washington Parish registration rolls; that the challenges were based on such defects in the voter registration cards as misspellings, deviations from printed instructions, failure to compute age with exact precision, and illegible handwriting; and that more than 50% of all white voters' registration cards contained defects similar to those which provided the bases for challenging Negro registrants. The court found further that the individual defendants had limited their examination almost exclusively to the registration records of Negro voters; that they made no examination of the registration records in wards where no Negroes were registered; that the acts of the individual defendants, as the defendant Registrar knew, were committed in order to deprive Negroes, solely because of their race or color, of the right to register and vote; and that the Negroes involved, unless they were restored to the registration rolls of Washington Parish, would be unable to vote in the April 1960 general election. The court concluded that the challenges were "massively discriminatory in purpose and effect" (Appendix, *infra*, p. 9a) and hence unconstitutional and void; and that, in giving effect to the mass challenges, the Registrar caused discrimina-

tion, in violation of the obligations imposed upon him by the Fifteenth Amendment.

The court's decree (Appendix, *infra*, pp. 1a–4a) enjoined the individual defendants and the Citizens Council from making (or causing to be made) racially discriminatory challenges. It enjoined the Registrar from giving legal effect to the challenges against the Negro registrants; from permitting their names to remain off the Washington Parish registration rolls; and from giving effect, in the future, to racially discriminatory challenges.

REASONS FOR GRANTING THE WRIT

This case, as noted by the Court in its *per curiam* order of January 26, 1960,[2] presents issues similar

[2] "The application of the United States for an order vacating the stay order of the Court of Appeals entered January 21, 1960, and reinstating the decree of the District Court, together with the request of the Attorney General of Louisiana for argument thereon, have been considered by the Court.

"1. It appears, as respondents pointed out in their application to the Court of Appeals for the stay herein, that the issues in *United States* v. *Raines*, No. 64, now pending on appeal in this Court, are pertinent to the disposition of this case. In view of this, and of the fact that the issues raised by this application are closely related to those involved on the merits of the controversy now before the Court of Appeals, the Court believes that the entire matter should be considered at one time. In light of the foregoing, and of the imminence of the State general election scheduled for April 9, 1960, the Court will entertain a petition for certiorari to review the judgment of the District Court, 28 U.S.C. §§ 1254(1), 2101(e), if filed by the Solicitor General on or before January 29, 1960. The petition may be filed in typewritten form. See the action of the Court as to *Bolling* v. *Sharpe, et al.*, 344 U.S. at 3.

"2. In the event that such a petition is so filed, the Court will hear argument upon the present application, the petition,

to those in *United States* v. *Raines*, No. 64, which was argued at the January 1960 session. In the *Raines* case, the Government instituted injunctive proceedings under the Civil Rights Act of 1957 (42 U.S.C. 1971(c)) to restrain officials from refusing, for reasons of race or color, to permit qualified Negro citizens to register to vote. The United States District Court for the Middle District of Georgia held the statute unconstitutional (172 F. Supp. 532), and the United States appealed.

The instant proceeding, which challenged the discriminatory removal of the names of Negro citizens from voting rolls, was similarly instituted against a state official (and others acting under the aegis of state law) under the authority conferred by Section 1971(c). And here, as in *Raines*, it is the contention of the state official that the Civil Rights Act of 1957 is unconstitutional. Respondent also contends, in the instant case, that the District Court's decree conflicts with various provisions of Louisiana law [3]—a conten-

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and the merits; on February 23, 1960, the case to be set at the head of the calendar for that day. See *Hannah* v. *Larche*, No. 549; *Hannah* v. *Slawson*, No. 550, 361 U.S. ——, December 7, 1959.

"3. The record, which may be filed in typewritten form, and the Government's brief on all matters will be filed on or before February 10, 1960, and the answering briefs of the respondents will be filed on or before February 20, 1960. The Government may file a reply brief on or before February 22, 1960.

It is so ordered."

[3] See respondent's motion to stay order of injunction filed in the Court of Appeals and attached as Exhibit E to the Government's application in this Court to vacate the stay issued by the Court of Appeals.

tion which is closely related to the issue of the power of Congress to implement the provisions of the Fifteenth Amendment by the procedures authorized in the Civil Rights Act of 1957.

This Court has noted the imminence of the Louisiana general election scheduled for April 19, 1960, and it has commented upon the desirability of considering "at one time" the issues posed by the instant litigation and by the *Raines* case. The United States concurs in the view that such a disposition is highly desirable and that this case is accordingly one in which it would be appropriate to exercise certiorari jurisdiction before judgment in the Court of Appeals.[4]

CONCLUSION

It is respectfully submitted that this petition for a writ of certiorari before judgment should be granted.

J. LEE RANKIN,
Solicitor General.

JANUARY 1960.

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[4] Cf. *White* v. *Mechanics Securities Corp.*, 269 U.S. 283, 299; *Graham & Foster* v. *Goodcell*, 282 U.S. 409, 411–412, 415, note 2; *United States* v. *Bankers Trust Co.*, 294 U.S. 240, 243; *Porter* v. *Dicken*, 328 U.S. 252; *Brown* v. *Board of Education*, 344 U.S. 1, 3; *Reid* v. *Covert*, 354 U.S. 1, 5; *Wilson* v. *Bohlender*, No. 37, this Term, decided January 18, 1960, slip op., p. 2, certiorari granted, 359 U.S. 906.

APPENDIX

In the United States District Court for the Eastern District of Louisiana, New Orleans Division

Civil Action No. 9146

UNITED STATES OF AMERICA, PLAINTIFF

v.

DIAZ D. MCELVEEN, E. RAY MCELVEEN, SAXON FARMER, AND EUGENE FARMER, INDIVIDUALLY AND AS MEMBERS OF THE CITIZENS COUNCIL OF WASHINGTON PARISH, LOUISIANA; CURTIS M. THOMAS, REGISTRAR OF VOTERS OF WASHINGTON PARISH, LOUISIANA, AND THE CITIZENS COUNCIL OF WASHINGTON PARISH, LOUISIANA, DEFENDANTS

DECREE

Pursuant to the Findings of Fact and Conclusions of Law, entered this date, it is ordered, adjudged and decreed that, pending further order of this Court:

1. Diaz D. McElveen, E. Ray McElveen, Saxon Farmer, and Eugene Farmer, individually and as members of the Citizens Council of Washington Parish, Louisiana, together with their agents and any persons acting in concert with them who have actual notice of this decree, are hereby enjoined from causing or initiating challenges or filing any affidavits of challenge which have as their purpose or effect discrimination based on race or color against registrants of Washington Parish, Louisiana, and from further engaging in any other acts and practices which would

interfere with the rights of any citizens of the United States to vote at any election without distinction of race or color.

2. The Citizens Council of Washington Parish, Louisiana, its officers, members, agents, and any persons acting in concert with it who have actual notice of this decree, is hereby enjoined from causing or in any way participating in the filing of affidavits of challenge which have as their purpose or effect discrimination based on race or color against registrants of Washington Parish, Louisiana, and from further engaging in any other acts and practices which would interfere with the rights of any citizens of the United States to vote at any election without distinction of race or color.

3. Curtis M. Thomas, individually and as Registrar of Voters of Washington Parish, Louisiana, his deputies and agents, and the successors of each, are hereby enjoined as follows:

(*a*) From giving any legal effect whatsoever to the approximately 1,377 challenges filed in the office of Registrar of Voters of Washington Parish, Louisiana against Negro registrants of that parish by the four individuals named in paragraph 1 of this decree during the period February 1, 1959, to June 16, 1959, both inclusive, or from giving any legal effect to any prior proceedings or orders based directly or indirectly upon such challenges.

(*b*) From permitting the names of any of the approximately 1,377 persons challenged as set out in paragraph 3(*a*) of this decree, to remain off the present and current rolls of qualified voters of Washington Parish, Louisiana, or from a legal supplement thereto, longer than ten days from the date of this decree. It is the intent and purpose of this paragraph that the persons enjoined shall do whatever is necessary to be done to reinstate within ten days from the

date of this decree upon the current rolls of qualified voters in Washington Parish and upon all official copies thereof, the names of all of the said approximately 1,377 persons.

(*c*) From acting upon or giving effect to any challenges of registrants in Washington Parish, Louisiana which might hereafter be filed in his office which have as their purpose or effect discrimination based upon race or color.

4. In effectuation of this decree, Curtis M. Thomas, Registrar of Voters of Washington Parish, Louisiana, is further ordered to file with the Clerk of this Court within ten days from the date hereof, a detailed report in writing of his full compliance with the provisions of paragraph 3(*b*) of this decree.

5. In further effectuation of this decree, Curtis M. Thomas, Registrar of Voters of Washington Parish, Louisiana, together with his successors, is further ordered to keep and maintain, from and after February 1, 1960, a tabulation showing the number of registrants of each race whose right to remain on the registration rolls of Washington Parish is challenged. If at the end of any three-month period thereafter, more than 5% of the registrants of any one race shall have been challenged, he shall within ten days thereafter submit to this Court a detailed report in writing concerning such challenges, giving the bases thereof and indicating whether the same or similar bases of challenges appear in the records of other registrants.

6. In further effectuation of this decree, the parties to this cause may at any time apply to this Court for an order for the inspection of, and photographing of, any or all records in the office of the Registrar of Voters of Washington Parish, Louisiana.

This Court retains jurisdiction of this cause of the purpose of issuing any and all additional orders herein as may, in its judgment, become necessary for the

purpose of modifying the same if, in its judgment, modification becomes necessary, and for the purpose of enforcing the same.

New Orleans, Louisiana, this 11th day of January, 1960

J. SKELLY WRIGHT, *Judge*.

[Caption omitted]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

WRIGHT, *District Judge*:

In the spring of 1959 the Citizens Council, professing a purpose to purge the registration rolls of Washington Parish, Louisiana, of all persons illegally registered, succeeded in disenfranchising 85% of Negro voters of the Parish and 0.07% of the white. The United States in this action charges that this profession of high purpose was a fraud designed to deny Negro citizens of a right to vote. Made defendants and charged with conspiring with the Citizens' Council are several members of the Council and the Registrar of Voters for Washington Parish.

In a prior action this court denied the defendants' motion to dismiss. *United States* v. *McElveen*, 177 F. Supp. 355. Here the United States has moved for a temporary injunction. Based on the evidence offered by all parties in connection with this motion, this Court now makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Individual Defendants Diaz D. McElveen, E. Ray McElveen, Saxon Farmer, and Eugene Farmer are, and at all times material hereto were, registered voters of Washington Parish, Louisiana, and during

the period from November 1, 1958 through July 1, 1959 were members of the Defendant Citizens Council.

2. Defendant Registrar Curtis M. Thomas is, and has been since September 1949, the Registrar of Voters of Washington Parish, Louisiana, with his office in Franklinton, Louisiana.

3. Defendant Citizens Council of Washington Parish, Louisiana, is and at all times material hereto was, a nonprofit corporation incorporated under the laws of the State of Louisiana and domiciled in Washington Parish Louisiana. One of its purposes is to maintain racial segregation in said parish.

4. Registration is a prerequisite under state law to voting in any election in the State of Louisiana, and may be either permanent or periodic. Washington Parish, Louisiana became a permanent registration parish in May of 1958 and a registered voter of this parish is not required to reregister unless his name is cancelled from the registration rolls in accordance with law.

5. The Defendant Registrar in his official capacity as Registrar of Washington Parish was and is responsible, among other things, for registering of qualified applicants for registration, for keeping and preserving of registration records, and for cancelling from the registration rolls the names of all voters who lose their right to remain on the rolls.

6. Each registered voter of Washington Parish has a registration card, Form of Application for Registration, which, except in the cases of illiterates and the physically disabled, is entirely filled out by the registrant and sworn to before the Defendant Registrar. The registration cards of current registrants are maintained in the office of the Registrar of Voters, and are filed in alphabetical order by precincts within the nine wards that comprise Washington Parish.

7. Acting under the authority of the laws of Louisiana, and more particularly Section 245, Title 18 Louisiana Revised Statutes of 1950, the Individual Defendants, commencing in February 1959 and ending in June 1959, filed in the office of the Defendant Registrar affidavits challenging the right of approximately 1,377 Negroes and approximately 10 white persons to remain on the registration rolls as qualified voters.

8. In filing the aforesaid challenges the Individual Defendants used the facilities of the office of the Defendant Registrar, the official records kept therein, and the Forms of Affidavit of Challenge provided for by the laws of Louisiana.

9. The Defendant Registrar, acting under the authority of Title 18 Section 245 of the Louisiana Revised Statutes of 1950, issued and caused to be issued to the persons challenged, Citations of Notice to Erase requiring them to appear at the office of the Defendant Registrar and prove by written affidavit of three bona fide registered voters their right to remain on the registration rolls.

10. Following and as a result of the challenges made by the Individual Defendants, the names of the persons challenged were removed from the registration rolls of Washington Parish. The number so removed was approximately 98% of the total that was removed from the rolls of Washington Parish during the period November 1, 1958 through July 1, 1959.

11. On November 30, 1958 there were 11,444 white persons and 1,517 Negroes registered to vote in Washington Parish, Louisiana. On June 30, 1959 there were 12,228 white persons and 236 Negroes registered to vote there. The decline in the number of registered Negro voters in Washington Parish between the dates November 4, 1958 and June 16, 1959 was a direct result of the filing in the office of the Regis-

trar of Affidavits of Challenge by the Individual Defendants.

12. The Affidavits of Challenge filed by the Individual Defendants purported to be based on defects or deficiencies in the registration cards such as misspellings, deviations from printed instructions, failure to compute age with exact precision, and illegible handwriting.

13. The same defects and deficiencies are to be found in at least half of the registration cards of the white citizens of Washington Parish currently on the registration rolls. Analysis of a random sampling of 200 cards, 198 of which were of white persons, revealed that over 60% had such defects and inconsistencies, and the Defendant Registrar, who has worked with all registration cards since 1949, testified that at least 50% had such errors and omissions.

14. In examining the Washington Parish registration records for the purpose of filing the said Affidavits of Challenge, the Individual Defendants limited their examination almost exclusively to the registration records of Negro voters while making only a token examination of the registration records of white voters. The Individual Defendants made no examination of the registration records pertaining to those wards in which no Negroes were registered and they challenged no voters in those wards.

15. The acts and practices of the Individual Defendants, as described, were committed and engaged in for the purpose and with the effect of depriving Negroes, solely because of their race or color, of the right to register and vote.

16. Based upon his knowledge that (*a*) the Individual Defendants virtually confined their examination of the registration records to those of Negro voters, (*b*) the challenges were directed almost entirely to Negroes and not white persons, and (*c*) the

Individual Defendants filed Affidavits of Challenge involving defects and deficiencies which he knew also appeared in the records of white persons, against whom Affidavits of Challenge were not filed, the Defendant Registrar was well aware of the racially discriminatory character of the challenges of the Individual Defendants.

17. Defendant Citizens Council at all times pertinent to this action approved and endorsed the aforesaid acts and practices of the Individual Defendants, all of whom were members of the Defendant Citizens Council.

18. But for the acts and practices of the Individual Defendants in filing the Affidavits of Challenge as described and the action of the Defendant Registrar in giving effect to such challenges, the approximately 1,377 Negroes previously registered to vote and removed from the registration rolls would be presently registered to vote.

19. Unless restored to the registration rolls of Washington Parish the approximately 1,377 Negroes previously registered to vote will be unable to vote in the General Election to be held April 19, 1960.

CONCLUSIONS OF LAW

1. This court has jurisdiction of this action. 28 U.S.C. 1345; 42 U.S.C. 1971(d).

2. The Individual Defendants, in challenging the registration status of voters, were acting under color of the laws of Louisiana. Providing for and supervising the electoral process is a state function. *Terry v. Adams*, 345 U.S. 461. The Individual Defendants participated in this state function under express authority of Louisiana law, using state facilities made available to them. L.R.S. 18:245. Their actions formed the basis of the removal of citizens from the registration rolls by the Defendant Registrar acting

in his official capacity. See *Shelley* v. *Kraemer*, 334 U.S. 1, 20.

3. The challenges by the Individual Defendants, endorsed and supported by the Defendant Citizens Council of Washington Parish, of which they were and are members, although not patently discriminatory on the face of each, were actually massively discriminatory in purpose and effect, and as such unconstitutional. U.S. Constitution, 15th Amend.; 42 U.S.C. 1971(a). The result of the challenges was to remove almost all of the Negro voters from the rolls and leave the white voters practically untouched, even though over 50% of the white registration cards have the same defects and deficiencies as did the challenged Negro cards. A court need not, and should not, shut its mind to what all others can see and understand. *Child Labor Tax Case*, 259 U.S. 20, 37. Discriminatory application of a statute, even one unobjectionable on its face, is unconstitutional. *Yick Wo* v. *Hopkins*, 118 U.S. 356; *Lane* v. *Wilson*, 307 U.S. 268.

4. The action of the Defendant Registrar in giving effect to the mass challenges of the Individual Defendants achieved a discriminatory result in violation of his duties under the 15th Amendment. Whether or not he had the racially discriminatory purpose which motivated the action of the Individual Defendants and the Defendant Citizens Council is irrelevant as a matter of law. *Avery* v. *Georgia*, 345 U.S. 559.

5. The challenges, having been made in violation of the 15th Amendment and 42 U.S.C. 1971(a), were and are themselves null, void and ineffective for any purpose, and the voters taken off the registration rolls as a result of these challenges were accordingly illegally removed. *Thornton* v. *Martin*, 1 Race Relations Law Reporter 213 (1956). It is of no bearing that some or all of the defects and deficiencies set out

as basis for the challenges may in fact exist, and if nondiscriminatorily cited, could constitute legal grounds for removal of voters from the rolls as indicated in *Thomas* v. *McElveen*, et al., Civil Docket No. 18,751, 22 Judicial District Court, Parish of Washington, Louisiana. This is not a matter of a failure or inability to show a common injury. Compare *Reddix* v. *Lucky*, 252 F. 2d 930. Here the common injury, which is the fatal defect of each challenge, is a shared discrimination in the application of the law. *Frasier* v. *Board of Trustees*, 134 F. Supp. 589, aff'd. per curiam 350 U.S. 979.

6. Plaintiff, the United States of America, has an interest and obligation broader than that of any other individual litigant, which should be taken into account in giving effect to the broad remedial purposes of the Civil Rights Act of 1957. This is not a case as between private parties and should not be so construed. *Georgia* v. *Tennessee Copper Co.*, 206 U.S. 230, 237. Courts of equity may, and frequently do, go much further both to give and to withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are concerned. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U.S. 515, 552.

7. The principle of the exhaustion of administrative remedies has no application to this case, since the qualifications of the persons challenged are not here at issue. The discrimination involved lies in part in the very act of subjecting the Negroes to the process of resorting to administrative remedies which are not required of white voters similarly situated. To require exhaustion of administrative remedies would make this court a party to the discrimination claimed. *Shelley* v. *Kraemer*, 334 U.S. 1. In any event, the law itself expressly dispenses with the requirement of the exhaustion of administrative remedies. 42 U.S.C.

1971(d). And where a person "has been illegally removed from the voters' list his remedy lies in having the illegal action rescinded, not in re-registering." *Reddix v. Lucky*, 252 F. 2d 930, 937.

8. This court has jurisdiction to issue an appropriate injunction in this case. 42 U.S.C. 1971(c).

Judgment for plaintiff.

J. SKELLY WRIGHT, *Judge.*

[Caption omitted]

OPINION DENYING MOTIONS TO DISMISS

WRIGHT, *District Judge:*

In the spring of 1959 the Citizens' Council, professing a purpose to purge the registration rolls of Washington Parish, Louisiana, of all persons illegally registered, succeeded in disenfranchising 85% of the Negro voters of the Parish and 0.07% of the white. The United States in this action charges that this profession of high purpose was a fraud designed to deny Negro citizens of a right to vote. Made defendants and charged with conspiring with the Citizens' Council are several members of the Council and the Registrar of Voters for Washington Parish.

The defendants have moved to dismiss, alleging the unconstitutionality of certain sections[1] of the Civil

[1] 42 U.S.C. § 1971 (a) and (c). These provisions read as follows:

"(a) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or

Rights Act of 1957 under which the United States is proceeding. They admit that under the Fifteenth Amendment, Congress may authorize the United States to seek injunctive relief to protect citizens against state action denying their right to vote because of race. They contend, however, that Section 1971(c) is unconstitutional in that it may be interpreted as authorizing such action against private individuals as well as persons acting under color of law.

The complaint here specifically charges that the defendants, acting under color of state law, have deprived certain named citizens of their right to vote because of their race. The motion to dismiss, of course, admits the truth of these allegations. There is, therefore, no contention that legislation covering the facts of this case would be invalid. The position of defendants simply is that because Section 1971 (c) may be more broadly interpreted, it is unconstitutional.[2]

Territory, or by or under its authority, to the contrary notwithstanding."

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person."

[2] The defendant Registrar of Voters makes the additional contention that the function he performed in disenfranchising the voters was purely ministerial and was required by state statutes. The complaint, however, specifically charges that he knowingly participated in the discrimination. Moreover, the Registrar is an indispensable party to the granting of the relief. See *Williams* v. *Fanning*, 332 U.S. 490.

The defendants' contention is so obviously without merit that this Court would merely deny the motion to dismiss without more were it not for the fact that a district court has upheld a similar contention and declared Section 1971(c) unconstitutional.[3] In so doing, that Court ignored the most elementary principles of statutory construction, as repeatedly announced by the Supreme Court, and relied on an old case[4] interpreting a criminal statute.

It is true that the various civil rights acts have been the subject of much confused litigation. Out of this confusion, however, have emerged two propositions, both of which have now won general acceptance. The first of these is that the Congress may, without reference to the Fifteenth Amendment, pass any legislation reasonably designed to protect citizens in the exercise of any right guaranteed by the Constitution.[5] The right to participate in the election of federal officers is so guaranteed.[6] Article I, Section 4, of the Constitution specifically authorizes Congress to regulate the manner of holding elections for federal office. Article I, Section 8, Clause 18, states that Congress is given authority "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers." Under this authority, presumably Congess may also control the registration, but not the qualification,[7] of voters in federal elections, since such authority would certainly be reasonably necessary to insure their proper conduct.

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[3] *United States v. Raines*, M.D. Ga., 172 F. Supp. 552.

[4] *United States v. Reese*, 92 U.S. 214.

[5] *United States v. Williams*, 341 U.S. 70; *United States v. Classic*, 313 U.S. 299; *Logan v. United States*, 144 U.S. 263; *Ex Parte Yarbrough*, 110 U.S. 651.

[6] See, Note 5.

[7] The qualification of voters in federal elections is prescribed by Article I, Section 2 of the Constitution.

The second proposition relates to the power of Congress to control all elections for state or federal office. With reference to such elections, the Fifteenth Amendment imposes on Congress the duty to protect citizens from being denied their right to vote "by the United States or by any State on account of race, color, or previous condition of servitude." To be appropriate under the Fifteenth Amendment, legislation must be directed against persons acting under color of law, state or federal, and it must relate to the denial, by such persons, of citizens' right to vote because of race. Any congressional action which does not contain these two elements cannot be supported by the Fifteenth Amendment.[8]

It is admitted by the United States that the sections of the Act in suit, since they specifically apply to all elections, are predicated on the Fifteenth Amendment. The United States contends that these sections must be read together, and when so read, apply only to persons acting under color of law. The United States also maintains that, conceding these sections may be construed more broadly so as to cover hypothetical cases involving actions against private individuals, since the defendants in the suit are within the legitimate reach of the legislation, the extended interpretation thereof with reference to persons not before the court is unnecessary. Certainly, the Government contends, no court should reach out for these imaginary persons, and, in effect, bring them into this litigation in order to declare the Act unconstitutional.

It is true that Sections 1971 (a) and (c), in outlining their area of operation, do not use the talismanic phrase "under color of law." By reading Sections 1971 (a), (b), and (c), however, the legisla-

[8] *Terry* v. *Adams*, 345 U.S. 461; *Smith* v. *Allwright*, 321 U.S. 649; *James* v. *Bowman*, 190 U.S. 127.

tive purpose and intent become obvious. Section 1971(a) applies to all elections and to all persons acting under color of law. The last clause in the section makes this clear.[9] Section 1971(b) relates only to federal elections and is not limited to persons acting under state law. Section 1971(c) authorizes the United States to seek injunctive relief where there has been a violation of either (a) or (b). Even if one had difficulty literally reading into Section 1971(a) the limitation to persons acting under color of law, any doubt respecting the intent of Congress can be resolved by reference to the prior jurisprudence outlining the permissible reach of the Fifteenth Amendment and restricting it specifically to persons acting under color of law.[10] No court is authorized to assume that Congress, in enacting this legislation, was ignorant of the uniform jurisprudence of the Supreme Court on the subject.[11] In fact, it is a cardinal rule of statutory construction that such jurisprudence may serve as a guide to interpretation.[12]

There are other elementary rules of statutory construction which may be consulted if one were in doubt as to the meaning of the Act. The first of these is that the constitutionality of an act will not be determined unless it is absolutely necessary to the decision

[9] The last clause reads:

"* * * any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

[10] See Note 8.

[11] The legislative history of the Act shows that Congress was aware of this jurisprudence and sought to draft legislation to meet its constitutional requirements. See Notes 17, 18, 19, and 20.

[12] *Shapiro* v. *United States*, 335 U.S. 1, 16; *Hecht* v. *Malley*, 265 U.S. 144, 153. See also *Missouri* v. *Ross*, 299 U.S. 72, 75; *Sessions* v. *Romadka*, 145 U.S. 29, 42.

of the case.[14] From this primary principle have evolved two rules of construction, both of which apply here: (1) the constitutionality of statutes will not be tested in the abstract without reference to the facts of the case at hand,[15] and (2) litigants may challenge the constitutionality of a statute only in so far as it affects them.[16]

Here we have defendants, all admittedly acting under color of state law, charged with denying citi-

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[14] See *United States v. International Union United Automobile, Aircraft and Agricultural Implement Workers of America*, 352 U.S. 567, at p. 590:

"The impressive lesson of history confirms the wisdom of the repeated enunciation, the variously expressed admonition, of self-imposed inhibition against passing on the validity of an Act of Congress 'unless absolutely necessary to a decision of the case.' *Burton v. United States*, 196 U.S. 283, 295."

See also cases collected in *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, at p. 345.

[15] See also *Yazoo and Mississippi Valley R. Co. v. Jackson Vinegar Co.*, 226 U.S. 217, at p. 219:

"* * * Of course, the argument to sustain the contention is that, if the statute embraces cases such as are supposed, it is void as to them, and, if so void, is void *in toto*. But this court must deal with the case in hand and not with imaginary ones. It suffices, therefore, to hold that, as applied to cases like the present, the statute is valid. * * *"

See *Liverpool, New York and Philadelphia Steamship Co. v. Commissioners of Emigration*, 113 U.S. 33, at p. 39:

"* * * It (the Court) has no jurisdiction to pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. * * *"

[16] See *Fleming v. Rhodes*, 331 U.S. 100, at p. 104:

"* * * Litigants may challenge the constitutionality of a statute only in so far as it affects them. * * *"

See also *United States v. Wurzbach*, 280 U.S. 396, at p. 399:

"It is argued at some length that the statute, if extended beyond the political purposes under the control of Congress, is too vague to be valid. The objection to uncertainty con-

zens their right to vote because of their race. Unquestionably, to the extent it affects them, the Act is appropriate under the Fifteenth Amendment. There can be no question but that they are covered by its terms. In fact, they admit it. Their point is that the legislation may be interpreted as covering others not before the Court, individuals not acting under color of law. This Court has no right to consider these imaginary persons in the hypothetical situations conjured up by the defendants in determining whether or not the Act may be constitutionally applied to the facts of this case and to the defendants before this Court. The duty of this Court is to strain, if necessary, to save the Act, not to destroy it.[16]

The legislative history of this legislation shows that Congress was aware of the widespread attempt to

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cerning the persons embraced need not trouble us now. There is no doubt that the words include representatives, and if there is any difficulty, which we are far from intimating, it will be time enough to consider it when raised by someone whom it concerns. * * *"

See also *Heald* v. *District of Columbia*, 259 U.S. 114, at p. 123:

"* * * It has been repeatedly held that one who would strike down a state statute as violative of the Federal Constitution must show that he is within the class of persons with respect to whom the act is unconstitutional and that the alleged unconstitutional feature injures him. In no case has it been held that a different rule applies where the statute assailed is an act of Congress; nor has any good reason been suggested why it should be so held. * * *."

See also *Rescue Army* v. *Municipal Court of Los Angeles*, 331 U.S. 549; *Virginian R. Co.* v. *System Federation No. 40*, 300 U.S. 515; *Jeffrey Manufacturing Co.* v. *Blagg*, 235 U.S. 571.

[16] See *Screws* v. *United States*, 325 U.S. 91, at p. 100:

"* * * Only if no construction can save the Act from this claim of unconstitutionality are we willing to reach that result. * * *"

disenfranchise the Negro, overtly through statutory enactments, and covertly through discriminatory administration of voting laws. Congress was also aware that disenfranchisement can be accomplished only with the cooperation of persons acting under color of state law since registration rolls are in the custody and under the control of state officers. Reference to the hearings,[17] the Committee reports[18] and the floor debate[19] on the legislation all demonstrate this awareness. This legislative history also shows beyond question that Congress was cognizant of its constitutional limitations and deliberately sought to enact legislation within those limits.[20] To say that Congress failed in this endeavor is to misread the language of the Act and to defile its great purpose.

In a democratic society there is no greater offense than illegally depriving a citizen of his right to vote. Such discrimination strikes at the very foundation of constitutional government. This offense is compounded when, as alleged here, it is committed under the guise of enforcing the law. The United States has made the solemn charge that these defendants have committed such an offense. Instead of challenging the constitutionality of the Civil Rights Act of 1957, these defendants should be searching their

[17] Hearings before Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 85th Cong., 1st Session; Hearings before Subcommittee No. 5 of the House Committee on the Judiciary, 85th Cong., 1st Session. Hearings before Committee on Rules, House of Representatives, 85th Cong., 1st Session, on H.R. 6127 at p. 44.

[18] House Report No. 291, 85th Cong., 1st Session; Report to Accompany S. 83, 85th Cong., 1st Session, Subcommittee Print.

[19] 103 Cong. Rec. 12150, 12565, 12829, 13138, 13876, 13324, 13333, 13319, 13322, 12149, 13120, 13126, 8498, 9396, 12805, 12900, 13006, 13732, 13320.

[20] In addition to Notes 17, 18, 19, see 103 Cong. Rec. 13834, 13159.

souls to see if this charge is well founded. This Court will make that determination after it hears all the evidence.

The motions to dismiss are denied.

NEW ORLEANS, LOUISIANA, *October 7, 1959.*

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